

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Zima et al.

Serial No.: 10/659,620

Group Art Unit: 1761

Filed: September 10, 2003

Examiner: Carolyn A. Paden

Allowed: November 23, 2007

For: PROCESS FOR THE RECOVERY OF A PHYTOLIPID COMPOSITION

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT**

In accordance with 37 C.F.R. § 1.705(b), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 459 days. This application is being filed before or with the issue fee payment, as required by 37 C.F.R. § 1.705(b).

**I. Statement of the Facts Involved**

**A. Correct Patent Term Adjustment**

Applicants received the Determination of Patent Term Adjustment with the Notice of Allowance and Fee(s) Due mailed from the Patent and Trademark Office (PTO) on November 23, 2007, advising that this application is entitled to 438 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 459 days based on the following facts:

Applicants received a Restriction Requirement in this application dated April 13, 2006. Applicants filed a Response to the Restriction Requirement on May 15, 2006 which was received by the USPTO on May 22, 2006. The Response did not include any amendments to the claims. However, Applicants next received a Notice of Non-Compliant Amendment, dated June 2, 2006 which stated the May 15, 2006 Response did not include a complete listing of the claims. However, since the May 15, 2006 Response did not include any changes to any pending claims, a complete listing of the claims was not required. The June 2, 2006 Notice was thus improperly sent. In any event, Applicants filed a Response to Notice of Non-Compliance on June 8, 2006 which was received at the USPTO on June 12, 2006. This created a 21 day delay caused by USPTO error. Applicants respectfully request an additional 21 days be added to the Patent Term Adjustment.

#### **Relevant Dates**

The above-identified application was filed September 10, 2003.

A Restriction Requirement was mailed on April 13, 2006, resulting in a PTO delay of 519 days beyond the 14 months provided by 35 U.S.C. § 154(b).

A response by applicant was filed May 15, 2006 (May 13, 2006 being a Saturday) and received by the USPTO on May 22, 2006.

A Notice of Non-Compliant Amendment was improperly mailed June 2, 2006.

A response by applicant was filed June 8, 2006 and received by the USPTO on June 12, 2006.

A non-final Office action was mailed August 18, 2006.

A response by applicant was filed December 18, 2006 and received by the USPTO on December 20, 2006, resulting in 32 day delay caused by Applicant delay.

A final Office action was mailed February 21, 2007.

A response by applicant was filed May 10, 2007 and received by the USPTO on May 15, 2007.

An Advisory action was mailed May 31, 2007.

A response by applicant was filed June 8, 2007 and received by the USPTO on June 11, 2007.

Another response by applicant was filed via facsimile June 18, 2007 which was forwarded to the Examiner on June 20, 2007, resulting in a 28 day delay caused by Applicant delay.

A Notice of Allowance was mailed June 22, 2007.

A Request for Continued Examination was filed electronically September 18, 2007 and forwarded to the Examiner on October 16, 2007.

A Notice of Allowance was mailed November 23, 2007.

Thus, the total PTO adjustments based on delay is 519 days and the reductions in term adjustment is 60 days, resulting in a patent term adjustment of 459 days total. Applicant respectfully requests that the current patent term adjustment be reconsidered.

#### **B. Terminal Disclaimer**

The above-identified application is not subject to a Terminal Disclaimer.

**C. Reasonable Efforts**

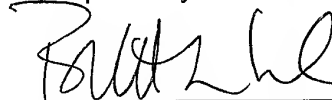
There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

**II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to Deposit Account 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account 06-0916.

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Respectfully submitted,



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Feb. 11, 2008  
Date